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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CHRISTOPHER A. NELSON, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

SEAGATE TECHNOLOGY LLC,

Defendant.

No. 5:16-cv-00523-RMW

**JOINT CASE MANAGEMENT  
STATEMENT & [PROPOSED]  
ORDER**

Complaint filed: February 1, 2016

ADAM GINSBERG, DUDLEY LANE  
DORTCH IV, DENNIS CRAWFORD, and  
DAVID SCHECHNER, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

SEAGATE TECHNOLOGY LLC,

Defendant.

No. 5:16-cv-00612-RMW

Complaint filed: February 5, 2016

The parties to the above-entitled actions jointly submit this JOINT CASE  
MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All  
Judges of the Northern District of California dated July 1, 2011 and Civil Local Rule 16-9.

1. Jurisdiction & Service

This Court has subject matter jurisdiction over this action pursuant to the Class Action  
Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), because there are more than 100 proposed Class  
Members, some members of the proposed class and Defendant Seagate Technology LLC  
("Seagate") are citizens of different states, and Plaintiffs allege that the amount in controversy  
exceeds \$5 million. Seagate has been served. At this time, the parties are not aware of any issues  
regarding personal jurisdiction or venue, or of any parties remaining that need to be served.

1           2.     Facts

2           Plaintiff's Statement: The four named Plaintiffs in the *Ginsberg et al. v. Seagate*  
3 *Technology LLC* action and the Plaintiff in the related *Nelson v. Seagate Technology LLC* action  
4 assert claims relating to their purchase of three terabyte hard disk drives ("Drives") which were  
5 manufactured, distributed, and sold by Seagate. Plaintiffs allege that Seagate misrepresented and  
6 omitted material facts regarding the reliability of the Drives, which each contained a model-wide  
7 defect and suffered catastrophic failure, and that Seagate failed to provide Plaintiffs and Class  
8 Members with non-defective replacements that conform to the Drives' express and implied  
9 warranties. Plaintiffs allege the Drives' model-wide defect causes them to fail prematurely at  
10 extremely high rates compared to comparable products and that Seagate omitted material  
11 affirmative misrepresentations and omissions regarding the reliability and longevity of the hard  
12 drives, in violation of state consumer protection laws. Plaintiffs also allege that Seagate failed to  
13 satisfy its warranty obligations because it warranted that it would replace failed drives, but the  
14 replacements were also defective and failed at extremely high rates. Plaintiffs allege that, because  
15 Seagate did not deliver conforming, non-defective drives, the warranties fail of their essential  
16 purpose.

17           The principal factual issues in dispute will center around Seagate's knowledge of the  
18 defect, the omissions of material fact and misleading representations regarding the Drives,  
19 Seagate's failure to fulfill its warranty obligations by providing defective replacements, and the  
20 extent of damages allegedly suffered by Plaintiffs and the Class.

21           Seagate's Statement: The four named Plaintiffs in the *Ginsberg et al. v. Seagate*  
22 *Technology LLC* putative class action assert claims virtually identical to those asserted in the  
23 related *Nelson v. Seagate Technology LLC* action, Case No. 5:16-cv-00523-RMW. Both lawsuits  
24 allege the same core factual allegations about certain Seagate three terabyte hard disk drives  
25 ("3TB HDDs"), which Plaintiffs claim they purchased, used and replaced pursuant to Seagate's  
26 limited warranty, but the replacements later failed. Seagate has moved to dismiss both complaints  
27 under Federal Rule of Civil Procedure 12(b)(6) and/or Federal Rule of Civil Procedure 9(b) on the  
28 legal bases outlined below in Section 3.

1 Key factual issues not mentioned by Plaintiffs include:

2 (1) Plaintiffs fail to allege they saw and/or relied on any of the allegedly false and  
3 misleading statements on which their allegations rely. Which, if any, of the snippets of marketing  
4 materials and data sheets alleged in the Complaint Plaintiffs saw, relied on, and found materially  
5 misleading will be key factual issues, if the Complaint is not dismissed because it fails to meet  
6 Rule 9(b) pleading standards.

7 (2) Plaintiffs fail to allege they have identified *any* common technical defect in their  
8 drives, merely that the drives allegedly failed during the warranty period, were replaced pursuant  
9 to the warranty, and those replacement drives eventually also failed. The fact that a product does  
10 not last forever does not make it defective.

11 (3) Plaintiffs' complaint(s) are based almost entirely *not* on their own experiences with  
12 Seagate drives, but on blog postings by low-cost cloud storage company Backblaze, Inc., which  
13 admittedly misused Seagate's consumer-grade 3TB drives by using them in a 24/7 commercial  
14 environment and "shucking" them from their protective casings. Whether Backblaze's reports are  
15 valid, admissible, or applicable to the consumer setting, and whether the reports provide a  
16 plausible basis for plaintiffs' claims will also be key issues in this case.

17 3. Legal Issues

18 Both the *Nelson* and the *Ginsberg* complaints allege violations of California's Unfair  
19 Competition Law ("UCL") and False Advertising Law ("FAL"), breach of express and implied  
20 warranties, and unjust enrichment. The *Nelson* complaint also asserts a claim under South  
21 Dakota's Deceptive Trade Practices Statute and the *Ginsberg* complaint asserts a claim under New  
22 York's Deceptive Acts and Practices Statute. The parties anticipate that the disputed points of law  
23 will include:

- 24 • Whether Plaintiffs' UCL, FAL, unjust enrichment, and consumer protection claims are
- 25 subject to the heightened pleading requirements of Rule 9(b) and, if so, whether the
- 26 allegations in the complaint satisfy 9(b) with respect to whether Plaintiffs saw, relied on,
- 27 found material, and were harmed by any of the alleged misstatements or omissions;
- 28 • Whether the UCL and FAL apply to alleged harms to non-California residents taking place
- outside California;

- Whether Seagate's warranty failed of its essential purpose and whether Seagate breached its warranty by providing nonconforming and defective replacement Drives;
- Alternatively, whether Seagate fully performed its obligations under the express warranty by providing replacement drives;
- Whether privity is required for express or implied warranty claims when a manufacturer includes misrepresentations on product labels or advertising materials and whether privity is required when Plaintiffs are third party beneficiaries to an implied warranty;
- Whether privity is required for breach of express or implied warranties under the Song-Beverly Consumer Warranty Act;
- Whether Plaintiffs can bring claims for unjust enrichment and money had and received where, among other things, there is an underlying agreement and no sum certain is sought, or
- Whether a plaintiff is permitted to plead unjust enrichment in the alternative to contractual-based claims, including breach of warranty.

#### 4. Motions

On April 6, 2016, in both the *Nelson* and *Ginsberg* cases, Seagate filed a Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 9(b). Pursuant to this Court's April 8, 2016 Order Granting the Parties' Joint Stipulation Regarding Briefing Schedule for Motions to Dismiss, Plaintiff's opposition to the Motions to Dismiss is due May 4, 2016, Defendant's reply is due May 20, 2016, and hearing is set for June 3, 2016.

On May 2, 2016, Plaintiffs filed an unopposed motion to consolidate the *Nelson* and *Ginsberg* cases and, as indicated below, seek to file an amended complaint. Once that pleading is filed and the Court rules on the motion to consolidate, the parties will agree on a new briefing and hearing schedule for Seagate's renewed motion to dismiss, assuming some or all of the aforementioned disputed legal issues remain in the amended complaint.

#### 5. Amendment to Pleadings

Plaintiffs are continuing their investigation of Defendant's conduct and, on or before May 4, 2016, Plaintiffs will amend their complaints to include additional plaintiffs and claims.

1           6.       Evidence Preservation

2           The parties have reviewed the Guidelines Relating to the Discovery of Electronically  
3 Stored Information (“ESI Guidelines”), and confirm that the parties have met and conferred  
4 pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve  
5 evidence relevant to the issues reasonably evident in this action.

6           7.       Disclosures

7           On May 6, 2016, the parties will exchange their initial disclosures pursuant to Fed. R. Civ.  
8 P. 26.

9           8.       Discovery

10          The parties are in the process of negotiating proposed orders governing electronic  
11 discovery and confidentiality pursuant to Rule 26(f)(3)(c) and expect to submit them to the Court  
12 for approval. As of this statement, no discovery requests have been served by either party. The  
13 parties anticipate discovery will focus on at least the following issues:

- 14          • The defective nature of the Drives and related warranty claim data regarding the Drives;
- 15          • Whether Defendant engaged in a pattern of deceptive and misleading conduct;
- 16          • Whether Defendant’s acts and omissions violated consumer protection, unfair competition,  
17 and/or false advertising statutes;
- 18          • Whether Defendant made material misrepresentations of fact or omitted stating material  
19 facts to Plaintiffs and the Classes regarding the defective nature and high failure rate of the  
20 Drives;
- 21          • Whether Defendant breached its express and implied warranties;
- 22          • Whether the Plaintiffs and members of the Classes have sustained ascertainable loss and  
23 damages as a result of Defendant’s acts and omissions, and the proper measure thereof;
- 24          • Whether Plaintiffs saw or relied on any of the alleged statements or omissions alleged in  
25 the Complaint, and whether such statements or omissions would have been materially  
26 misleading to a reasonable consumer;
- 27          • Whether Plaintiffs have identified evidence of a common defect;
- 28          • The circumstances underlying Backblaze’s blog postings and whether they are reliable or  
applicable to the consumer setting.

1           9.       Class Actions

2           (a)       Plaintiffs seek to maintain this case as a class action pursuant to Federal Rule of  
3 Civil Procedure 23(a) and 23(b)(3), and 23(c)(4) in the alternative. Members of the proposed  
4 Classes are fully ascertainable and can be identified using Defendant's records of online retail  
5 sales (including records of retail sales by its authorized resellers and dealers), product  
6 registrations, and other information kept by Defendant in the usual course of business and/or in the  
7 control of Defendant. The members of the proposed Classes are so numerous that joinder of all  
8 members would be impracticable because they contain, at a minimum, thousands of members.

9           There are common questions of law or fact that predominate. Specifically:

- 10           • Whether Defendant engaged in a pattern of fraudulent, deceptive and misleading conduct;  
11           • Whether Defendant's acts and omissions violated consumer protection, unfair  
12           competition, and/or false advertising statutes;  
13           • Whether Defendant made material misrepresentations of fact or omitted stating material  
14           facts to Plaintiffs and the Classes regarding the defective nature and high failure rate of  
15           the Drives;  
16           • Whether Defendant breached its express and implied warranties;  
17           • Whether, as a result of Defendant's misconduct, Plaintiffs and the Classes are entitled to  
18           relief, and, if so, the nature of such relief;  
19           • Whether, by the misconduct set forth herein, Defendant violated the common law of  
20           unjust enrichment; whether the Plaintiffs and members of the Classes have sustained  
21           ascertainable loss and damages as a result of Defendant's acts and omissions, and the  
22           proper measure thereof.

23           The representative Plaintiffs' claims are also typical of the claims of the members of the  
24           Classes they seek to represent. Plaintiffs and members of the Classes have been injured by the  
25           same wrongful practices in which Defendant has engaged. Plaintiffs' claims arise from the same  
26           practices and course of conduct that give rise to the claims of the members of the Classes and are  
27           based on the same legal theories. A class action is superior to all other available methods for the  
28           fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all  
29           Class Members is economically unfeasible and procedurally impracticable. Plaintiffs know of no  
30           difficulty to be encountered in the management of this action that would preclude its maintenance  
31           as a class action.

32           In the alternative, Plaintiffs seek certification pursuant to Rule 23(c)(4) on the issues of: (a)  
33           whether Defendant breached its warranty contracts with Plaintiffs and the Class; and (b) whether

1 Defendant engaged in deceptive, confusing or misleading practices in connection with the sale and  
 2 warranting of the Drives.

3 Plaintiffs seek to maintain this action on behalf of the following classes:

- 4 • All individuals in the United States who purchased, not for resale, at least  
 5 one Seagate model ST3000DM001 hard drive, or at least one external drive  
 that contained a drive with the aforesaid model number.
- 6 • Alternatively, Plaintiffs bring this action as a class action on behalf of the  
 7 following Subclasses:
  - 8 ○ All individuals in California who purchased, not for resale, at least  
 9 one Seagate model ST3000DM001 hard drive, or at least one  
 external drive that contained a drive with the aforesaid model  
 number.
  - 10 ○ All individuals in South Carolina who purchased, not for resale, at  
 11 least one Seagate model ST3000DM001 hard drive, or at least one  
 external drive that contained a drive with the aforesaid model  
 number.
  - 12 ○ All individuals in New York who purchased, not for resale, at least  
 13 one Seagate model ST3000DM001 hard drive, or at least one  
 14 external drive that contained a drive with the aforesaid model  
 number.
  - 15 ○ All individuals in Florida who purchased, not for resale, at least one  
 16 Seagate model ST3000DM001 hard drive, or at least one external  
 drive that contained a drive with the aforesaid model number.

17  
 18 (b) Seagate believes that no class should be certified in this case. Plaintiffs fail to  
 19 allege a common defect and, with respect to Plaintiffs' consumer fraud-based claims, individual  
 20 issues of exposure, materiality, reliance and damages will predominate. Additional defenses to  
 21 class certification may be revealed upon discovery.

#### 22 10. Scheduling

23 Given Plaintiffs' intention to file amended pleadings, the parties propose submitting a  
 24 proposed case schedule to the Court subsequent to or in conjunction with a proposed briefing  
 25 schedule for Seagate's anticipated motions to dismiss.

#### 26 11. Related Cases

27 The Ginsberg and Nelson actions are related cases, and Plaintiffs now ask that they be  
 28 consolidated. A putative class action containing similar allegations about Seagate's 3TB hard



drives is currently pending before Judge Karnow in San Francisco Superior Court, *Pozar v. Seagate Technology LLC*, CGC-15-547787 (filed September 4, 2015) (alleging California class). The Pozar plaintiffs filed a First Amended Complaint on November 20, 2015, Seagate filed a demurrer on December 15, 2015, and, following a hearing on February 10, 2016, the court overruled Seagate's demurrer. Seagate answered the First Amended Complaint on February 23, 2016 and discovery subsequently commenced. The parties here have agreed to informally coordinate discovery with the *Pozar* matter to the extent feasible, to avoid duplication and promote efficiency.

12. Relief

Plaintiffs seek restitution, actual damages, consequential damages, and/or incidental damages caused by the Drives' failure, pre-judgment and post-judgment interest, other relief as provided by the statutes, equitable relief in the form of restitution and/or disgorgement, injunctive relief, and attorney's fees and costs.

13. Settlement and ADR

Given Plaintiffs' forthcoming amended pleading and Defendant's likely motion to dismiss, the parties believe alternative dispute resolution is premature. The parties have complied with ADR L.R. 3-5 and, pursuant to same, participated in an ADR Phone Conference on May 2, 2016 (which the parties and the Court's ADR attorney agreed was for both *Ginsberg* and *Nelson*), at which it was decided that a further ADR Phone Conference will take place on November 1, 2016, after the pleadings are settled. The parties agreed that they may be willing to discuss early resolution at a later time.

14. Consent to Magistrate Judge For All Purposes

Whether all parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment. \_\_\_\_ YES \_\_\_\_X\_\_ NO

1           15.     Other References

2           The parties do not believe the case is suitable for reference to binding arbitration, a special  
3 master, or the Judicial Panel on Multidistrict Litigation.

4           16.     Narrowing of Issues

5           Presently, there are no issues that the parties believe can be narrowed by agreement or by  
6 motion, or suggestions to expedite the presentation of evidence at trial.

7           17.     Expedited Trial Procedure

8           The parties do not believe this is the type of case that can be handled under the Expedited  
9 Trial Procedure of General Order 64.

10          18.     Trial

11          The case will be tried by a jury, except with respect to the UCL, FAL, and other equitable  
12 claims, and the parties currently anticipate the trial will not take longer than one week.

13          19.     Disclosure of Non-party Interested Entities or Persons

14          Each party has filed the “Certification of Interested Entities or Persons” required by Civil  
15 Local Rule 3-15.

16          Other than the parties themselves, Plaintiffs are unaware of any persons, firms,  
17 partnerships, corporations (including parent corporations) or other entities which have: (i) a  
18 financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any  
19 other kind of interest that could be substantially affected by the outcome of the proceeding.

20          Seagate identified the applicable related entities in its Certificate of Interested Entities or  
21 Persons, filed April 6, 2016. Seagate also notes that plaintiffs in the *Pozar* case pending in state  
22 court may also have an interest in the outcome of these proceedings.

23          20.     Professional Conduct

24          All attorneys of record for the parties have reviewed the Guidelines for Professional  
25 Conduct for the Northern District of California.

26  
27  
28

21. Other

At this time, the parties are unaware of any other matters that may further facilitate the just, speedy and inexpensive disposition of this matter.

Dated: 5/3/2016

s/ Marc A. Goldich  
Counsel for plaintiff

Dated: 5/3/2016

s/ Anna McLean  
Counsel for defendant

## CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated:

UNITED STATES DISTRICT JUDGE